

ORIGINAL

Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554

In the Matter of )  
 )  
Implementation of Section 17 ) ET Docket No. 93-7  
of the Cable Television )  
Consumer Protection and )  
Competition Act of 1992: )  
Compatibility Between )  
Cable Systems and Consumer )  
Electronics Equipment )

TO: The Commission

PETITION FOR RECONSIDERATION AND CLARIFICATION

**SCIENTIFIC-ATLANTA, INC.**

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June 15, 1994

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ET Docket No. 93-7

TO: The Commission

**PETITION FOR RECONSIDERATION AND CLARIFICATION**

Scientific-Atlanta, Inc. ("Scientific-Atlanta"), by its attorneys and pursuant to Section 1.429 of the Federal Communications Commission's rules, hereby submits its Petition for Reconsideration of the Commission's First Report and Order in the above captioned proceeding, which adopted rules seeking to promote compatibility between consumer electronics and cable systems.<sup>1</sup> Scientific-Atlanta urges the Commission to reconsider and clarify two little-discussed aspects of its Report and Order that threaten inadvertently to reduce competition in the cable equipment manufacturing industry and, in turn, impose unnecessary costs on cable subscribers nationwide. Scientific-Atlanta supports a resolution of these issues that would, as contemplated by the

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<sup>1</sup> First Report and Order in ET Docket No. 93-7, FCC 94-80 (rel. May 4, 1994) ("Report and Order").

Cable Television Consumer Protection and Competition Act of 1992 (the "Act"), both broadly protect consumer interests in equipment compatibility and at the same time, allow innovation and competition in the equipment marketplace to thrive.

# **I. INTRODUCTION AND SUMMARY**

Scientific-Atlanta is a world leader in cable television electronics, broadband communications systems, satellite-based communications networks, and instrumentation for industrial, telecommunications, and government applications. The company is a leading supplier of products and systems for building and operating the most modern and efficient cable television plants. In particular, Scientific-Atlanta is the leading manufacturer of headend and distribution equipment, and one of the two leading producers of subscriber equipment for the cable television industry. Over the past 20 years, the company has created more than 3,000 jobs, and its exports have increased at a compound annual rate of almost 20 percent and are expected to comprise 50 percent of sales by the end of the decade. Accordingly, Scientific-Atlanta has a strong interest in consumer equipment compatibility and, in turn, the rules adopted in this proceeding to serve that end.

Congress and the Commission have sought to adhere faithfully to two fundamental principles in seeking to ensure

greater compatibility between consumer electronics equipment and cable systems. First, Section 624A(c) of the Act directs the Commission to weigh the costs and benefits to consumers as it adopts its compatibility requirements.<sup>2</sup> The FCC's mandate is thus to design rules that impose the least cost on cable operators, equipment manufacturers, and, in turn, subscribers, while securing for subscribers the benefits of compatibility. Second, the Commission's Report and Order consistently recognizes the importance of allowing a competitive equipment marketplace to flourish, in particular by giving "manufacturers and operators the ability and incentives to introduce new products and to respond to consumer demand." Report and Order at ¶ 5.<sup>3</sup> To this end, the Commission has commendably sought to identify existing or clearly impending marketplace solutions to consumer needs and preferences; the resulting rules generally have refrained from artificially dictating the shape of the marketplace.

Scientific-Atlanta thus urges the Commission to reverse two particular deviations from this sound approach by: (1) abandoning the rule that would unintentionally thwart competition and innovation in the cable equipment marketplace

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<sup>2</sup> 47 U.S.C. § 544A(c).

<sup>3</sup> See also id. at ¶¶ 17 ("it is important that these rules provide for and encourage competition in the market for equipment used by subscribers to receive cable service."), 5, 6, 29, 30, and 42.

by prohibiting operators from changing infrared codes; and  
(2) clarifying the rule that requires operators to offer set-top devices with multiple tuners so that it achieves the benefits of broad compatibility while avoiding unnecessary costs for subscribers and operators.

**II. THE COMMISSION SHOULD AVOID UNDERMINING COMPETITION AND INNOVATION IN THE CABLE EQUIPMENT MARKETPLACE BY ABANDONING ITS LATE-ADDED PROHIBITION ON OPERATOR CHANGES IN THE INFRARED CODES USED FOR REMOTE CONTROL OPERATION OF SET-TOP DEVICES**

The FCC's new remote control rules will inadvertently stifle competition in equipment manufacturing unless the Commission abandons its little-considered prohibition on cable operators' changing the infrared codes used for remote control operation of set-top terminals. The Commission adopted this new Section 76.630(c) of its rules in response to a proposal set forth in reply comments submitted by the Consumer Federation of America and the Home Recording Rights Coalition<sup>4</sup> -- a proposal thus lacking the benefit of even one round of deliberation and comment by the many parties in this extended proceeding. Scientific-Atlanta now urges the Commission to rescind this rule because it will impede the growth of competition and technological innovation in the equipment market, contrary to the Commission's intent in this

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<sup>4</sup> Reply Comments of the Consumer Federation of America and the Home Recording Rights Coalition in ET Docket No. 93-7 (submitted February 16, 1994).

proceeding. Moreover, the Commission has adopted other rules that adequately ensure the compatibility of remote control and set-top devices without needlessly restricting the continued expansion and evolution of the equipment marketplace.

A freeze on infrared codes will largely enshrine the existing market shares and market structure in cable equipment manufacturing by greatly impeding the ability of cable operators to change equipment vendors. The Commission's ruling fails to account adequately for the fact that competitive manufacturers of equipment use different infrared codes that operate with discrete technologies. Therefore, if an operator is not allowed to change the code of the equipment currently deployed, the operator is effectively precluded from changing equipment vendors. The rule thus has the unintended effect of skewing the equipment marketplace in favor of the manufacturers with the greatest deployed equipment base. While Scientific-Atlanta is already a firmly established competitor in this market, neither its own interest nor the public interest is well-served by such entombing of an otherwise dynamic business. Indeed, such a result directly contravenes the Commission's stated goals in this proceeding of avoiding standards that "could constitute a gateway that constrains the development of new technologies" and attempting "to accommodate new developments



that may not be fully compatible with standards we adopt now." Report and Order at ¶ 30.

Under the current rule, equipment manufacturers will be required to license codes and associated technology from their competitors before attempting to induce an operator to switch vendors. Incumbent vendors, however, lack any incentive to license their codes or technology to competitors. Indeed, at least one leading vendor holds and actively enforces patents on its remote codes. The Commission's decision unwittingly favors such a vendor over other competitors.<sup>5</sup> Moreover, virtually all new entrants in the equipment market would be forced to incur such licenses fees, which ultimately would be passed on to subscribers in the form of higher equipment charges. Therefore, this rule harms consumers not only directly, but also indirectly, as new entrants must overcome an additional hurdle to marketplace viability.

In addition, set-top terminal manufacturers will be forced to produce numerous versions of the same set-top model so that it can be utilized with various imbedded brands of

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<sup>5</sup> Similarly, the Commission's rule will impede development of new features and functions for set-top devices because competitors will be forced to bear licensing costs to develop new equipment that is required to incorporate existing codes while adding new codes. See 47 C.F.R. § 76.630(c) ("Cable operators may, however, use new equipment that includes additional infrared codes for new remote control functions that were not included in existing models of customer premises equipment.").

set-top devices and remote controls. The costs of such an elaborate production and inventory scheme -- costs born by manufacturers, operators,<sup>6</sup> and ultimately consumers -- far outweigh the benefits, especially given the presence of effective alternative solutions.

Subscriber interests in remote control compatibility with set-top devices are already well protected by other rules adopted in this proceeding. First, under new Section 76.630(e)(2)(iii) of the Commission's rules, operators offering remote control capability with set-top devices that are provided to subscribers must provide subscribers with "a representative list of the models of remote control units currently available from retailers that are compatible" with the set-top devices. This requirement will readily allow and encourage subscribers to purchase compatible remote control units.

Indeed, given the fact that most consumers can be expected to buy "universal" programmable remote controls which will work with any set-top device, simple operator notification of the availability of these controls should

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<sup>6</sup> In contrast to the likely scenario under the Commission's rule, there is presently no need or incentive for operators to use only one brand of set-top converter. Instead, operators typically have supplied consumers with a number of different brands of "converter-only" boxes. Going forward, it would be unreasonable and impractical to require operators to support many permutations on a permanent basis, especially given that some makers have gone out of business and some models have been discontinued.

amply suffice. As the Commission duly noted in its report to Congress, "many cable remote controls are also 'universal' devices" that "can be programmed or 'taught' to operate any set-top device and thus can be used to operate other consumer devices, such as a TV receiver or VCR." Report to Congress on Means of Assuring Compatibility Between Cable Systems and Consumer Electronics Equipment (adopted Oct. 5, 1993) at 27. The availability of such remote control units, combined with the general statutory prohibition on operators taking any action that disables the converter box from working with commercially available remote units, is fully adequate to ensure compatibility between set-top converters and remote controls. See 47 U.S.C. § 544A(c)(2)(e).<sup>7</sup> The further requirement that all existing infrared codes not be altered, however, disserves competition and innovation and thereby artificially raises equipment costs for consumers. The Commission should therefore revisit and repeal this requirement.

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<sup>7</sup> It is noteworthy that the Report and Order imposes no infrared code restriction on TV and VCR manufacturers, groups that -- to the best of Scientific-Atlanta's knowledge -- have changed codes far more often than have the set-top manufacturers. Therefore, under the Commission's present rule, when a subscriber buys a new VCR that does not work with the remote supplied by the cable operator, the subscriber will wrongfully fault the cable operator.

**III. THE COMMISSION SHOULD CLARIFY THE REQUIREMENT FOR SET-TOP DEVICES TO INCLUDE MULTIPLE TUNERS SO THAT BROAD COMPATIBILITY IS ENSURED WITHOUT CREATING A GOLDPLATED STANDARD IMPOSING UNDUE COSTS ON CONSUMERS**

The Commission should reconsider or clarify its apparent conclusion that the requirement for operators to supply cable system terminal devices that will enable simultaneous reception of multiple signals encompasses "two or more" signals. See 76.630(d)(2)(i) (emphasis added).<sup>8</sup> Manufacturers will attempt to meet the still limited marketplace demand for the simultaneous reception of two signals at a cost to operators and subscribers that is not prohibitive, but Scientific-Atlanta respectfully submits that a rule mandating more than two tuners in a set-top device is simply unwarranted and uneconomic.

The technology to manufacture set-top devices with more than two tuners has not yet progressed far beyond the drawing board even for those manufacturers who believe that a market for such features might one day emerge. It would therefore be exceedingly difficult and expensive for cable vendors to develop such equipment in the time frame envisioned by the FCC. For example, some wide screen (16 x 9 aspect ratio) TV receivers have come into existence offering "picture out of

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<sup>8</sup> The note following Section 76.630 of the Commission's rules, which states that the rule governing multiple tuners shall become effective October 31, 1995, mistakenly refers to this section as "(d)(1)(i)."

picture" capabilities where three 4 x 3 small pictures are displayed vertically on one side of a large 4 x 3 picture. To fully service such a receiver would require a set-top device with four tuners and four descramblers. Scientific-Atlanta has previously examined the market for such corresponding cable equipment and concluded that it is not sufficiently large to justify the considerable research, design and production costs that would be entailed in such high-end market entry. Like the television receivers capable of displaying three or four channels simultaneously themselves, for the readily foreseeable future the required cable equipment will be very expensive and surely well outside the reach of all but the most well-endowed videophiles. Accordingly, the Commission should allow a demonstrable marketplace need for set-top devices with more than two tuners to develop before imposing any mandate that operators must routinely provide, and consumers must routinely pay for, such costly equipment.

On a related point, Scientific-Atlanta also requests clarification that the multiple tuner rule is satisfied where operators provide two single-tuner boxes in a "master/servant" configuration, thereby achieving the same result as a single converter with two built-in tuners. Such a clarification would provide operators flexibility in meeting the Commission's requirements and also allow

marketplace forces to determine the level of investment warranted in set-top devices with multiple tuners.

#### IV. CONCLUSION

For the foregoing reasons, Scientific-Atlanta respectfully urges the Commission to modify and clarify its equipment compatibility rules in the limited respects noted above so as to promote a viable, competitive cable equipment market offering choice and compatibility on an affordable basis for consumers. By minimizing unduly burdensome equipment rules of dubious benefit but certain and substantial cost to consumers, the modifications suggested above will better serve the sound public policy goals of Congress and the Commission in ensuring enhanced compatibility between consumer electronics equipment and cable systems.

Respectfully submitted,

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